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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 372

CHERRYWOOD APARTMENTS, INC., OAKWOOD APARTMENTS, INC., APPLEWOOD APARTMENTS, INC., ET AL., PETITIONERS

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (R. 7-10) is reported in 98 F. Supp. 577.

JURISDICTION

The judgment of the Court of Claims was entered on July 9, 1951 (R. 10). The petition for a writ of certiorari was filed October 8, 1951. The jurisdiction of this Court is invoked under 28 U.S.C. 1255.

QUESTION PRESENTED

Whether a governmental obligation to cease operation of temporary war housing projects as soon as the supply of private housing should equal the housing demand may be implied from the Lanham Act of October 14, 1940, as amended, 42 U.S.C., secs. 1521, *et seq.*

STATUTE INVOLVED

Section 313 of the Lanham Act, as amended by the Act of April 20, 1950, sec. 202 64 Stat. 72, 42 U.S.C., Supp. IV, 1533, provides:

> SEC. 313. Except as otherwise provided in this Act, the Administrator shall, as promptly as may be practicable and in the public interest, remove (by demolition or otherwise) all housing under his jurisdiction which is of a temporary character, as determined by him, and constructed under the provisions of this Act, Public Law 781, Seventy-sixth Congress, and Public Laws 9, 73, 353, Seventy-seventh Congress. Such removal shall, in any event, be accomplished not later than December 31, 1952 or by such later date as may be required because of extensions of time in accordance with section 604 hereof, with the exception only of such housing as the Administrator, after consultation with local communities, finds is still urgently needed because of a particularly acute housing shortage in the area: *Provided*, That all such exceptions shall be reexamined annually by the Administrator and that all such exceptions and reexaminations shall be reported to the Congress. Not-

> withstanding any other provisions of law except provisions of law hereafter enacted expressly in limitation hereof, no Federal statute, or regulation thereunder, shall prohibit or restrict any action or proceeding to recover possession of any housing accommodations for the purpose of carrying out the provisions of this section or section 604 of this Act.

STATEMENT

Petitioners here seek review of a judgment of the Court of Claims dismissing the case upon demurrer (R. 10). The allegations of the petition (R. 1-4) filed February 28, 1951, may be briefly summarized as follows:

During 1944 and 1945, the Government, acting under the Lanham Act, caused temporary war housing projects to be constructed at Front Royal, Virginia. Petitioners are engaged in the construction, operation and sale of residential rental properties and between 1947 and 1949 they constructed specified dwelling units in connection with the emergency housing program announced by the President in 1946. It is alleged that since 1948 there has been no acute housing shortage in Front Royal and that since 1945 no substantial defense activities have been carried on in that area. Asserting that petitioners, operating private business enterprises, could not hope to compete with federal war housing, it is alleged that they undertook construction and operation of the dwelling units already mentioned "upon defendant's implied

undertaking" in the Lanham Act "not to compete with private housing" (R. 2-3). The Government has continued to operate its projects. Judgment is sought in specified sums representing property losses by way of expenses and losses of rents and profits.

The United States attacked the petition by demurrer and by a plea to the jurisdiction (R. 3-4). After argument, the Court of Claims sustained the demurrer holding that no promise could be spelled out of the Lanham Act that the Government's temporary war housing would be shut down as soon as privately financed housing caught up with demand.

ARGUMENT

1. Petitioners argue that continued operation of the housing projects is inconsistent with the purposes of the Lanham Act which were to promote the war effort by supplying housing for war workers and servicemen in areas where an acute shortage of housing existed or impended (42 U.S.C. 1521). There is no suggestion that these conditions did not exist when the Government's housing projects were constructed in 1944 and 1945 or that, in any other particular, the projects failed to meet the requirements of the Lanham Act.

2. Congress did not, as petitioners assume, require that all temporary war housing projects be liquidated just as soon as the conditions which

required their erection ceased to exist. On the contrary, recognizing that in the interest of orderly administration some time would be required to terminate the program, Congress, in 1943, added section 313 to the Lanham Act providing that temporary war housing should be removed "as promptly as may be practicable and in the public interest" with a terminal date (subject to exceptions to be reported to Congress) of two years after the President declares that the emergency declared by him on September 8, 1939, has ceased to exist. Act of July 7, 1943, sec. 4, 57 Stat. 388.[1] Subsequent statutes have changed the terminal date so that at the time of the hearing below it was December 31, 1952. See Act of June 28, 1948, Sec. 4, 62 Stat. 1064; Act of October 25, 1949, 63 Stat. 906; Act of April 20, 1950, sec. 202, 64 Stat. 72;[2] see also *id.*, sec. 201, 64 Stat. 59, 42 U.S.C., Supp. IV, 1585.

These express provisions relating to the liquidation of temporary war housing projects negative any possible implied undertaking to terminate such operations at an earlier date. As the court below concluded (R. 10), "the various expressions of Congress were what they purported to be, acts

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[1] This emergency has not been generally terminated. See *Woods* v. *Miller Co.*, 333 U.S. 138, 140, fn. 3.

[2] Further provisions relating to temporary housing, not material here, have been made by sections 603 and 604 of the Defense Housing and Community Facilities and Services Act of 1951, approved September 1, 1951, Public No. 139, 82d Cong., 1st Sess.

of legislation, and not statements implying promises that governmentally constructed housing would not be permitted to compete, even temporarily, with private housing to the prejudice of the latter." Since the decision below is plainly correct, there is no occasion to discuss here other objections to maintenance of this suit, such as the standing of petitioners to recover damages resulting simply from competition or the effect of the pendency of a suit in another court to compel housing officials to terminate operations of these projects (Pet. 4-6).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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DECEMBER 1951.

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